

20 AUGUST 1947

I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
	2975-A		Copy of Exhibit 2975 with inter- lineations		26324
			<u>MORNING RECESS</u>		26325
	2975-B		Copy of document, numbered "3" in pencil		26331
	2975-C		Copy of document, numbered "5" in pencil		26332
	2975-D		Copy of document, numbered "6" in pencil		26332
			<u>AFTERNOON RECESS</u>		26369
1401-B-3	2976		Telegram from Ambassador NOMURA to TOGO, dated 30 November 1941 re Address by Premier TOJO		26373
1401-C-3	2977		Telegram from TOGO to Ambassador NOMURA, dated 1 December 1941		26375
1400-H-7	2978		Excerpt from "Foreign Relations of the US Japan: 1931-1941" Vol. II - Statement Handed by the First Secretary of the Japanese Embassy (TERASAKI) to Mr. Joseph W. Ballantine on 2 December 1941		26376

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of
EXHIBITS
(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
	2979		Excerpt from "Pearl Harbour Attack" Vol. 2	26386	
1500-D-6	2979-A		Excerpt therefrom - Testimony of Sumner Welles, Former Under Secretary of State		26386

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I N D E X
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(Witness excused)

26347

1 Wednesday, 20 August 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE STUART McDOUGALL,
15 Member from the Dominion of Canada and HONORABLE
16 JUSTICE I. M. ZARAYANOV, Member from the USSR., not
17 sitting from 0930 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -

21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present,
4 except ARAKI and KAYA who, with the Court's permission,
5 are conferring with counsel during the first half of
6 the morning session.

7 I understand they will be conferring all the
8 morning with the counsel. They have permission to do
9 so.

10 Mr. Tavenner.

11
12 K U M A I C H I Y A M A M O T O, resumed
13 the stand and testified through Japan-
14 ese interpreters as follows:

15 MR. TAVENNER: I would like, if the Tribunal
16 please, to hand to the Tribunal the original of the
17 document introduced in evidence which was defense
18 document 3134-A -- I mean, prosecution document --

19 THE PRESIDENT: 2975 is the exhibit number.

20 MR. TAVENNER: -- with the state seal, secret
21 seal at the top. The reason for handing the original
22 is that we had not had an opportunity to have photo-
23 static copies of it made.

24
25 THE PRESIDENT: Well, I see no reason why
you should not substitute a photostatic copy for the

1 original.

2 We give you permission to do so. The docu-
3 ment will be handed to the Tribunal in court.

4 MR. TAVENNER: I wanted the Tribunal to have
5 the advantage of seeing the form and contents of the
6 original document itself.

7 THE PRESIDENT: The photostatic copy must
8 be formally tendered. That is what I am indicating.

9 CROSS-EXAMINATION

10 BY MR. TAVENNER (Continued):

11 Q Mr. YAMAMOTO, was the draft of this document
12 prepared as early as November the 27th?

13 A I have no definite recollection whether or
14 not it had been prepared on the 27th. At any rate,
15 it was prepared on the basis of the impression re-
16 ceived upon receipt and reading of the United States
17 memorandum of November 26th.

18 Q Could it have been prepared immediately upon
19 the receipt of that memorandum?

20 A Yes.

21 Q So, according to your best judgment, it was
22 prepared upon the receipt of the note of November 26th?

23 A That is so.

24 Q And, what day was the note of the 26th re-
25 ceived according to Japanese time, Tokyo time?

1 A There were several telegrams from Ambassador
2 NOMURA in Washington reporting receipt of the United
3 States note in Washington. Of these telegrams, most
4 of them arrived during the 27th of November, Japan
5 time. However, it is my recollection that all of
6 these telegraphic reports were in our hands early on
7 the 26th.

8 Q So that this memorandum was prepared, most
9 likely, on the 27th or certainly not later than the
10 28th of November?

11 A According to my pencil note -- my pencil note
12 therein was put in there some time during the 27th or
13 in the morning of the 28th.

14 Q Will you tell us when the draft of the
15 fourteen-part note was prepared?

16 A It is my recollection that I began to gather
17 together opinions and views regarding the United States
18 note from the afternoon of the 28th.

19 Q And, was the draft completed as early as
20 December 3rd?

21 A It is my recollection that the drafting of
22 the note to the United States Government of the date
23 of the 7th of December was completed at my office
24 before the 3rd of December, but I believe the draft
25 was not completed in so far as the conclusion was

1 concerned.

2 Q How long before the 3rd of December was the
3 draft completed?

4 A It is my recollection that the draft -- the
5 reply in so far as the comments and criticisms of
6 the United States proposals and the Japanese views
7 thereon were completed by the last day of November
8 with the exception, of course, of the conclusion.

9 Q What do you mean by, "the conclusion?"

10 A I am referring to the fourteenth section of
11 the Japanese note.

12 Q Had that section also been drafted prior to
13 the end of November?

14 A The section containing the conclusion was
15 not drafted by the end of November.

16 Q What work had been done upon it prior to the
17 end of November?

18 A By the end of November, only a very general
19 study was made, with reference to the conclusion, with-
20 in the Foreign Ministry.

21 Q The results of that study were made known at
22 the Imperial Conference that was held on December 1st,
23 was it not?

24 A The question with regard to the opening of
25 hostilities was decided at the Imperial Conference on

1 the 1st of December. The decision to open hostilities
2 includes the two points that there were no more pros-
3 pects of a successful conclusion of the negotiations
4 and also no desire for the continuance of the negoti-
5 ations, and at the Imperial Conference of the 1st of
6 December there was no discussion held with regard to
7 what kind of international procedure to take before
8 the opening of hostilities.
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1 Q Well, the 14th section or part as finally
2 drafted was in conformity with the study that had been
3 made prior to the end of November, was it not?

4 A The 14th section was prepared following a
5 decision made which was reached subsequent to a dis-
6 cussion with reference to the note to be sent to the
7 United States at the Liaison Conference on the 2nd of
8 December.

9 Q But the draft as prepared conformed to the
10 study that you made in the War Ministry prior to the
11 end of November, did it not? I meant to say "Foreign
12 Ministry."

13 A I merely remember that as a result of various
14 studies made, a draft of what was later to be the official
15 last note of the Japanese Government was made by me.

16 THE INTERPRETER: Correction: By the end of
17 November, on the basis of various studies made, a
18 personal draft was drawn up by me with reference to the
19 last note to be sent to the United States Government,
20 and my plan was to send an official note to the United
21 States Government.

22 A (Continuing) May I add that it was my personal
23 draft plan. May I further add that all in the Foreign
24 Ministry were agreed that proper international procedure,
25 or procedure proper under international law should be

1 taken in reference to the delivery of this note
2 following discussion of this matter.

3 Q Do you have that note or a copy of it, that
4 is, your draft?

5 A I do not have it.

6 Q Where is it?

7 A I was transferred to the Ministry for Greater
8 East Asiatic Affairs at the time it was established in
9 1942, and all documents in the Foreign Ministry which
10 was under my custody up to that time were left at the
11 Foreign Ministry. Now, the personal draft which I
12 referred to was written in pencil. I have no definite
13 recollection, because I have a feeling that the original
14 draft of a draft which was prepared by me, might have
15 been destroyed by me before I was transferred to the
16 Ministry for Greater East Asiatic Affairs.

17 THE INTERPRETER: Slight correction: I believe
18 that my draft, being one of the drafts upon which a
19 later draft was drawn up, it might have been destroyed
20 by me before my transfer.

21 Q Did not the requirements of your office make
22 it imperative that you preserve as part of the records
23 of the Foreign Ministry copies of drafts of documents
24 such as this?

25 A Of course, official documents approved by my

1 superiors had to be filed and kept in custody in the
2 Ministry, but such notes as I have just referred to,
3 a personal draft of a personal draft, need not be
4 preserved.

5 Q Was there a copy lodged in the Foreign
6 Ministry?

7 A If I had possession of any copy of such, then
8 I would have been able to give my feelings at that
9 time and my thinking at that time more clearly in this
10 Tribunal. Unfortunately, I do not have any.

11 Q My question was whether or not you lodged
12 a copy of that draft with the Foreign Ministry. Please
13 answer the question.

14 A I think this recollection of mine is as positive
15 and as accurate as it could be and that is that this
16 draft, personal draft, was prepared in pencil and it
17 was later revised by me in pencil, and, therefore,
18 no copies were made.

19 Q Was the draft later prepared, that is, on
20 December 2nd or later, in conformity with the principles
21 set forth in this draft you have just spoken of?

22 A As I have said repeatedly before, my personal
23 draft stated my views on the United States note. That
24 was the primary purpose, or the primary contents of my
25 draft. As to what form the note to the United States

1 Government should take, it was my personal opinion
2 that it should take the form of a general note. At
3 that time, because the Japanese attitude was undecided,
4 I merely stated my personal opinion on such matters.
5 The conclusion set forth in the note as sent to the
6 United States was decided upon after the general
7 policy had been decided upon at the Liaison Conference.

8 Q Now, will you please answer my question. I
9 will attempt to make it specific and as direct as it
10 can be made and I wish you to give me a direct answer.

11 Did the draft, as complete, include the matters
12 contained in your pencil memorandum to which you refer
13 on part 14?

14 A The conclusion set forth that the negotiations
15 would be discontinued. In my personal draft I used
16 certain phraseology normally used in accordance with
17 international law in addition to the statement of the
18 breaking off of the negotiations.

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1 Q Do I understand you, then, to state that the
2 final draft did contain the language which you ex-
3 pressed in your note? Please answer yes or no.

4 A As I have said before, some parts were in-
5 cluded, but generally speaking, the contents were
6 different.

7 Q What was the difference?

8 A My personal draft used words which were
9 usually used in ultimatums.

10 Q You are speaking now of the technical use of
11 language. I ask you whether or not the substance or
12 the meaning of the two were the same.

13 A The contents were different.

14 Q Explain the difference.

15 A In addition to the fact that the discon-
16 tinuance of negotiations was unavoidable, I added
17 the words that Japan would reserve freedom of action.

18 Q Now, did you discuss this matter with the
19 other members in the Foreign Ministry during the month
20 of November?

21 A When you say "this matter," may I understand
22 that to mean the note?

23 Q Yes, the subject of your pencilled note,
24 prepared in November.

25 A I had frequent consultations with the Foreign

Minister and the Vice-Minister.

1 Q And did you not show this pencilled memo-
2 randum to the Foreign Minister?

3 A I have no recollection as to ever having
4 shown this to the Foreign Minister -- as to whether
5 I showed this pencilled memorandum to the Foreign
6 Minister, but I did show it to the Vice-Minister in
7 the course of consultations with him.

8 Q You consulted the Foreign Minister about
9 this same subject matter, did you not?

10 A It was only as a matter of course that I
11 consulted the Foreign Minister with regard to the con-
12 tents of the note to the United States and received
13 instructions from him.

14 THE MONITOR: Correction: It is not "only
15 as a matter of course" but "Of course I consulted with
16 the Foreign Minister and sometimes received his in-
17 structions."

18 A (Continued) I recall that the Foreign Min-
19 ister frequently directed me and instructed me to take
20 the proper steps in the handling of this matter --
21 proper and careful steps in the handling of this
22 matter.

23 Q Who was the Foreign Minister?

24 A Foreign Minister TOGO.
25

1 MR. TAVENNER: Now, if the Tribunal please,
2 this concludes for the present my cross-examination
3 of this witness.

4 In June and July of 1946 a request was
5 made by the Division of Investigation of the prosecu-
6 tion section of the proper Japanese authorities for
7 the production of the documents relating to diplomatic
8 negotiations of this very period between the United
9 States and Japan. We were advised repeatedly by per-
10 sons no longer in the employment of the Japanese
11 Government that the documents relating to these
12 matters had either been turned over to the Washington
13 Document Center or had been destroyed, and that there
14 were no such documents any longer in the custody of
15 the Japanese Government.

16 When some of the documents we would like to
17 have scanned appeared in the defense case, I immediate-
18 ly asked that an investigation be made, with the
19 result that the document introduced yesterday was dis-
20 covered in the possession of the Foreign Ministry,
21 and it was not until after the witness had left the
22 stand on his first cross-examination that that docu-
23 ment came into our hands for translation and review.
24 It may actually have come into the hands of a repre-
25 sentative of the IPS during the day on which the wit-

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1 ness was on the stand, but its contents were not known
2 to us until after the adjournment of court. Now,
3 there may be other documents which we will find it
4 important to cross-examine this witness upon. We
5 will hurry our investigation as much as we can with
6 a view to recalling this witness if it seems advis-
7 able.

8 You may take the witness.

9 THE PRESIDENT: There are certain questions
10 which I propose to put to the witness on behalf of a
11 Member of the Tribunal. These questions refer to
12 Exhibit 2975, the Outline of Future Diplomatic Measures.

13 The first question is as follows:

14 BY THE PRESIDENT:

15 Q Did you discuss the contents of this document
16 with the Foreign Minister, TOGO?

17 A With regard to that document, I don't have
18 any clear understanding. May I see the document?

19 Q That is the document you were recalled for
20 cross-examination on. You surely know what I am talking
21 about. I described it as the Outline of Future Diplo-
22 matic Measures vis a vis the United States, if that
23 makes it clear. I don't think it is necessary to tell
24 you that.

25 A This document was written by me in which I

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1 gathered together and assembled my personal ideas.
2 It was never presented to Foreign Minister TOGO.

3 Q The second question is this: On what occa-
4 sion was the alteration in the document made by you?

5 A This document is one of the several docu-
6 ments prepared by my subordinates following the
7 receipt of the United States note of November 26,
8 setting forth his views and opinions thereon. It
9 was the general practice for several people or a number
10 of people concerned with the matter to set forth their
11 opinions, and it was my duty to analyze and adopt
12 certain parts and eradicate certain parts. The cir-
13 cumstances under which this document was prepared is
14 that this document was prepared and presented to me by
15 one of my subordinates, upon which I made certain re-
16 visions.

17 Q Was that done after consultation with the
18 Foreign Minister?

19 A It was entirely my personal idea, and no
20 consultation was held with the Foreign Minister.

21 Q Was the document printed?

22 A The document submitted by my subordinate was
23 typed out, but the revisions made thereon by me was
24 not printed. This document was not an officially
25 approved draft; it was merely a personal draft made

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1 up by me, and that was the state of the document to
2 the very last. Hence this document does not bear
3 neither my signature nor my seal.
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1 Q Was it circulated?

2 A It was not circulated.

3 Q I have another question on behalf of a
4 member of the Tribunal: You testified that the
5 hostilities were accorded only on December 1st.
6 If so, why is it that in your affidavit you stated
7 that your fleet was dispatched to Hawaii on Novem-
8 ber 26th?

9 A I testified that I had no knowledge
10 whatsoever of the dispatch of the Japanese fleet,
11 or anything pertaining to military operations.

12 Q Well, I will still ask you to answer
13 this question: Is it not true that the sending
14 of your fleet was accorded at the same time when
15 KURUSU was sent to the United States in the first
16 days of December, 1941?

17 A I had absolutely no knowledge with respect
18 to the matter set forth in that question.

19 Q When was it accorded to dispatch your
20 fleet to Hawaii on November 26, 1941?

21 A I have no knowledge whatsoever.

22 THE PRESIDENT: Mr. Tavenner.

23 MR. TAVENNER: If the Tribunal please, I
24 would like to ask one or two more questions in
25 response to one matter brought out in his answer

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CROSS

1 to the Tribunal's question.

2 BY MR. TAVENNER:

3 Q I am not certain that I quite understood
4 your reply in which you stated that there were
5 copies made of your report, that is, this docu-
6 ment 2975, regarding future negotiations vis a vis
7 the United States, but that they were not printed.
8 What do you mean by that?

9 A I said that the draft submitted to me by
10 my subordinate was typewritten, but the pencilled
11 revisions or notes that I had made on that was
12 neither typed nor printed.

13 Q I would like to present you with another
14 document.

15 (Whereupon, a document was handed
16 to the witness.)

17 Will you examine the document now handed
18 to you and state whether or not you can identify it?
19 Is your name signed at the end of it?

20 A Will you wait just a moment, please?

21 Q Can you not identify that document
22 without reading every word of it?

23 A This is a typed copy of a draft on which I
24 made pencilled notes. I believe that since it does
25 not bear my signature it must have been typed out

1 by my subordinate following my revision, and kept in
2 file, and therefore I will have to correct a state-
3 ment I made before, that the draft on which I made
4 pencilled notes was not typed.

5 Q So the draft was typed, with the inter-
6 lineations that you had made, as shown by the
7 document itself?

8 A Yes, that is so.

9 Q And this document is marked "secret" at the
10 top by the appropriate seal of the Japanese Govern-
11 ment, is it not?

12 A Yes, that is so.

13 MR. TAVENNER: I desire to introduce this
14 document in evidence as a prosecution exhibit.

15 THE PRESIDENT: Major Blakeney.

16 MAJOR BLAKENEY: I would like to reserve
17 any objections until I have had a chance to see the
18 document.

19 THE PRESIDENT: Admitted on the usual terms.

20 MR. TAVENNER: I will not read the document,
21 if the Tribunal please, because it is a copy of
22 Exhibit 2975 with the interlineations included
23 at the very end.

24 THE PRESIDENT: What interlineations? You
25 mean the parts underlined in Exhibit 2975?

1 MR. TAVENNER: If the Tribunal please,
2 the document now being presented includes the
3 interliniations that appear in Document 2975 and
4 which are underscored in the copy of that document.

5 THE PRESIDENT: Will you give us copies of
6 the document last admitted -- English translations --
7 showing the interliniations?

8 MR. TAVENNER: Comparison will show that
9 in the document just presented it appears as one
10 continuous document. There are no interliniations
11 that appear above the line. When the document is
12 given a number I will read the interliniated portions.

13 THE MONITOR: Mr. Tavenner, can we have
14 the Japanese copy or the English copy, either one?

15 MR. TAVENNER: It will be only three or
16 four lines.

17 THE MONITOR: Then it will be the transla-
18 tion in substance, not the exact words. Will that
19 be all right?

20 MR. TAVENNER: Yes.

21 THE CLERK OF THE COURT: Prosecution
22 document without document number, being copy of
23 Exhibit 2975 with interliniations, will receive
24 exhibit number 2975-A.

25 (Whereupon, the document above

referred to was marked prosecution exhibit
No. 2975-A and received in evidence.)

MR. TAVENNER: I will read from document
2975-A that portion which appeared as interlinea-
tions in document 2975.

THE PRESIDENT: Mr. Tavenner:

MR. TAVENNER: Yes, sir.

THE PRESIDENT: At the top of the last
exhibit these words appear in parentheses "(YAMA-
MOTO Private Draft)". Does that appear in the
original?

MR. TAVENNER: That is an ink notation on
the original.

THE PRESIDENT: A colleague would like to
know where you got this copy, or document last
tendered.

MR. TAVENNER: It was obtained by the same
method and at the same time as the former document,
which I explained a moment ago.

Now I will read paragraph one.

THE PRESIDENT: Will you read it after the
recess, Mr. Tavenner?

We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was
taken until 1100, after which the proceed-
ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: The accused KAYA is now in court
4 Mr. Tavenner.

5 MR. TAVENNER: If the Tribunal please, I
6 will now read from exhibit No. 2975-A those sentences
7 which contain the interlineations appearing in
8 exhibit 2975. In the second sentence, first
9 paragraph:

10 "Such being the case, although it will be
11 necessary to break off the negotiations at a proper
12 time, we should make it our main object for the time
13 being to strictly guard lest the real intentions of
14 the Empire be perceived."

15 The next sentence is the last sentence under
16 paragraph numbered one:

17 "But for the time being have them continue
18 the negotiations with sincerity, asking numerous
19 questions on the various points noted here separately."

20 And the last paragraph: "2. In this
21 answer we should use phraseology which will put the
22 responsibility for future success or failure on the
23 United States and furthermore should take care not
24 to create the impression of a break off of negotia-
25 tions."

CROSS-EXAMINATION

1 BY MR. TAVENNER (Continued):

2 Q At the time I handed the original document,
3 2975-A, to you for identification, I called your
4 attention to what I thought was your signature. I
5 understood you to say that it was not your signature.
6 Will you look again at the document and see what
7 purports to be your signature and examine it again?
8 It appears in ink at the very beginning of the docu-
9 ment instead of at the end.

10 A Yes, it appears under the title and says,
11 "YAMAMOTO - private draft," but this was written in
12 pencil by one of my subordinates. It is not my
13 signature. The words, "YAMAMOTO - private draft,"
14 explain the nature of this document.

15 Q And that appears as an ink notation?

16 A Yes.

17 Q What is the name of the subordinate who, you
18 say, presented you with this study or note?

19 A I have no definite recollection but I believe
20 it was the Chief of the First Section of the American
21 Affairs Bureau, Mr. KASE.

22 Q Who placed the ink notation on the document?

23 A I do not know who wrote it because a number
24 of secretaries were in charge of the filing of documents.
25

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1 Q When was that ink notation placed on the
2 document?

3 A I believe when this copy was made but I
4 have no clear recollection whatsoever -- but I do not
5 know.

6 Q When copies of documents are made, which
7 copy is given to the Foreign Minister, that is, the
8 first or last copy or which copy?

9 A In case copies are made of the officially
10 approved draft it is a practice to give the top sheet
11 to the Foreign Minister; but in the case of private
12 drafts, there is no case of submitting copies to the
13 Foreign Minister. But as to this copy I do not know
14 when it was prepared; but judging from the seal
15 "Secret" at the top of the document there may have
16 been a copy made for the purpose of preparing a resume
17 after the opening of hostilities. Whatever the case
18 may be, I have no -- I do not remember this copy. I
19 do not remember this copy at all.

20 Q What disposition is made of the second copy?

21 A With respect to documents which belong to the
22 category of private drafts, in some cases they are filed
23 in the record in toto or if they concern business which
24 I handled, it may be in my possession or in the hands
25 of the Chief of Section if some matters were handled

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1 by him, and some are kept in the possession of
2 secretaries in the bureau.

3 Q But what disposition is normally made of
4 the second copy in distribution?

5 A There is no fixed practice or regulation.

6 Q Will you examine the original document and
7 state which copy it is?

8 A According to the notation at the top
9 it says "No. 7 of seven copies," so it indicates
10 that it is the seventh copy.

11 MR. TAVENNER: I desire to offer in evidence
12 other copies constituting all of the copies we re-
13 ceived from the Foreign Ministry of this document,
14 which shows that copies 1, 2 and 4 are missing.

15 THE PRESIDENT: Major Blakeney.

16 MR. BLAKENEY: I object to the reception of
17 these documents on the ground that it has no bearing
18 upon any issue before the Tribunal.

19 THE PRESIDENT: How do you think it will
20 help us, Mr. Tavenner, to have the copies?

21 MR. TAVENNER: If the Tribunal please, I have
22 no special desire to place these copies in evidence.
23 I thought that as a matter of fairness these documents
24 should be presented -- as a matter of fairness to the
25 accused.

1 THE PRESIDENT: What inference can we draw
2 against any of the accused from those particular
3 copies?

4 MR. TAVENNER: There are two inferences:
5 one against them and one to some extent in favor of
6 them. It shows that all of the copies were not
7 actually circulated as they may have been, as could
8 have been done. That is an inference probably in
9 their behalf. It shows at the same time that three
10 of the copies are not accounted for, including copy
11 No. 1 which normally, as the witness says, is delivered
12 to the Chief of the Section, who in this instance is
13 the accused TOGO.

14 I think they should be received in evidence
15 for whatever value they have.

16 MR. BLAKENEY: Until such time as there is
17 some evidence of when this was prepared, the Court
18 can no more assume that Mr. TOGO was Foreign Minister
19 than it can assume that any of his successors was
20 Foreign Minister. The witness, moreover, has specif-
21 ically and unequivocally stated that copies of docu-
22 ments of this type were not circulated to the Minister.
23 The whole suggestion that any inference to be drawn
24 from these documents is one calculated only to preju-
25 dice these defendants, not to constitute legal proof

1 against them.

2 THE PRESIDENT: The Tribunal overrules the
3 objection and admits the documents by a majority.

4 CLERK OF THE COURT: Prosecution documents,
5 without number, just described will receive exhibit
6 No. 2975-B.

7 (Whereupon, the documents above
8 referred to were marked prosecution exhibit
9 No. 2975-B and received in evidence.)

10 Q How soon after the alteration of the document
11 were these copies prepared?

12 A I do not know.

13 MR. TAVENNER: That is all for the present,
14 your Honor.

15 THE PRESIDENT: Is there any further re-
16 examination?

17 MR. BLAKENEY: There will be re-examination.

18 I suggest, if the Tribunal please, that
19 those three copies of the last document admitted in
20 evidence should be given separate numbers.

21 THE PRESIDENT: Separate letters, what is
22 wrong with that?

23 MR. TAVENNER: There is no objection, if
24 your Honor please, and I would like to make this
25 suggestion: that as these are all copies, it is a

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CROSS

1 needless waste of time and material to process them
2 as separate documents and serve separate copies, and
3 I would like to dispense with the processing and
4 service of copies in this instance.

5 THE PRESIDENT: I think I can safely say
6 the Tribunal dispenses with that. Call out the
7 letters, B, C, and D.

8 CLERK OF THE COURT: Prosecution document
9 No. 5 will receive exhibit No. 2975-C and prosecution
10 document No. 6 will receive exhibit No. 2975-D.

11 (Whereupon, prosecution documents,
12 copies numbered in pencil 3, 5 and 6, were
13 marked prosecution exhibits No. 2975-B,
14 No. 2975-C and No. 2975-D, respectively, and
15 received in evidence.)
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REDIRECT EXAMINATION

1 BY MR. BLAKENEY:

2 Q Let the witness be handed exhibit No. 2975-A.

3 Do you know when this copy was typed, Mr.

4 Witness?

5 A I do not know.

6 Q Do you know who was Foreign Minister when it
7 was typed?8 A I do not know the date on which this docu-
9 ment was typed. I do not know who the Foreign Minister
10 was.11 Q Do you know whether this document was brought
12 to the attention of any Foreign Minister?13 A I have no knowledge as to the preparation of
14 this copy, but I can say that documents of this kind
15 could not possibly have been presented to the Foreign
16 Minister.17 MR. BLAKENEY: Will you repeat that answer,
18 please?19 (Whereupon, the last answer was read
20 by the official court reporter.)

21 Q Let the witness be handed exhibit 2975-B.

22 Please examine that document and state
23 whether you know when it was typed.24 A I do not know.
25

1 Q Is that a copy of the same document which
2 you have just examined as exhibit 2975-A?

3 A I think it is the same copy.

4 Q That is copy number what, exhibit 2975-B?

5 A Copy No. 3.

6 Q Exhibit 2975-A was copy number what?

7 A Copy No. 7.

8 Q Do you know whether exhibit 2975-B was ever
9 shown to any Foreign Minister?

10 A I do not know.

11 Q Do you know who was Foreign Minister when it
12 was typed?

13 A I do not know.

14 MR. BLAKENEY: Let the witness be shown
15 exhibit 2975-C.

16 THE PRESIDENT: Can we not assume he will
17 give the same answers in respect of the remaining
18 copies, to save time?

19 MR. BLAKENEY: I should think so, but the
20 documents were admitted over my objection as raising
21 an inference of some knowledge by somebody. Therefore,
22 I assume that they have probative value which I can't
23 quite understand, and I should like to try to disprove
24 any such probative value.

25 THE PRESIDENT: We waste time here trying to

1 save it.

2 MR. BLAKENEY: In view of your Honor's
3 remark I will refrain from exhibiting the remaining two
4 copies to the witness and ask him some other questions.

5 THE PRESIDENT: We take it he would give the
6 same answers.

7 Q Mr. Witness, do you know where the copies
8 Nos. 1, 2, and 4 of this document, which the
9 prosecution state to be missing from the Foreign
10 Ministry files, are now located?

11 A I do not know.

12 Q Do you know what distribution was made of
13 those copies, 1, 2, and 4, at any time in the past?

14 A I do not know.

15 Q Looking at exhibit 2975-A in comparison with
16 exhibit 2975-B -- no, I am sorry. Looking at exhibit
17 2975 in comparison with exhibit 2975-A, tell the
18 Tribunal whether the stamp of classification of
19 secrecy is the same or different.

20 A The seal indicating secrecy is very much
21 different.

22 Q Which of those is of higher and which of
23 lower degree?

24 A The copy which shows my penciled notations
25 between the lines is stamped, "State Secret." This

represents the highest degree of secrecy.

1 Q What is the grade of secrecy as indicated
2 by the stamp on the later copy--on the other copy?

3 A It is stamped, "Kimitsu" or "Secret," and
4 the degree is much lower.

5 Q On what kind of documents is the stamp,
6 "State Secret," used? I mean, of course, was used
7 at that time?

8 A The stamp, "State Secret," was placed
9 at that time on all documents referring to matters
10 or negotiations on which absolute secrecy had to be
11 preserved and absolutely no leakage could be per-
12 mitted; for instance, such matters as the United
13 States-Japanese negotiations, and it represents the
14 highest degree of secrecy.

15 Q Did the Foreign Ministry possess one or more
16 of such stamps?

17 A There were many seals, the State Secret
18 seals, in the Foreign Ministry, and they were kept
19 in the various bureaus and sections within the minis-
20 try and the secretaries in the Foreign Office used
21 this stamp on certain documents which they felt or
22 were instructed should bear such a seal.

23 Q From the fact that the draft which was
24 typed, incorporating your penciled notations, bears
25

1 "I replied to your question that that was a fact."

2 In truth you had not replied to the question
3 last read to you. I ask you whether you intended
4 this answer to be to that question or to the preced-
5 ing question to which you had replied that that was a
6 fact?

7 A I was under a misapprehension at the time.
8 I said that was a fact in answer to the question
9 relating to my telephone conversation with Ambassador
10 KURUSU, and I repeated again with reference to that
11 question, that that was the fact.

12 Q Then what is your answer to the question;
13 "And was that not done with the real intention of
14 holding the United States off by continuing to talk
15 peace while preparing to attack?"

16 A That there was not such a thing.

17 THE PRESIDENT: Before proceeding with the
18 remainder of my re-examination I should like to ask
19 an adjournment for a consultation.

20 THE PRESIDENT: We will adjourn until half-
21 past one.

22 (Whereupon, at 11:50, a recess
23 was taken.)

24 I said that was a fact in answer to the question
25 relating to my telephone conversation with Ambassador
KURUSU, and I repeated again with reference to that
question, that that was the fact.

Q Then what is your answer to the question;
"And was that not done with the real intention of

1 the stamp "Secret," can you draw any inference con-
2 cerning the date of preparation of that typed draft?

3 A Documents relating to the Japanese-American
4 negotiations during the negotiations all bore the
5 stamp, "State Secret." However, after the outbreak
6 of war many documents which hitherto had borne the
7 stamp, "State Secret," required no longer such degree
8 of secrecy and were therefore changed to the ordinary
9 stamp such as "Kimitsu" or "Secret." In view of the
10 fact that the document brought to my attention bears
11 the seal, "Secret," there is a possibility that the
12 office in the Foreign Ministry in charge of the matter
13 made copies for the purpose of making a set of files of
14 some other document based on the document and already
15 classified as just "Secret."

16 Q Yesterday in cross-examination, at page
17 26,292 of the record, you were asked concerning your
18 telephone call to Ambassador KURUSU, and in answer
19 to the question whether you asked him to hold the
20 negotiations open you stated, "That is a fact." You
21 were then asked the following question: "And was
22 that not done with the real intention of holding the
23 United States off by continuing to talk peace while
24 preparing to attack?" There was then an interruption,
25 after which being asked for your answer you said:

1 "I replied to your question that that was a fact."

2 In truth you had not replied to the question
3 last read to you. I ask you whether you intended
4 this answer to be to that question or to the preced-
5 ing question to which you had replied that that was a
6 fact?

7 A I was under a misapprehension at the time.
8 I said that was a fact in answer to the question
9 relating to my telephone conversation with Ambassador
10 KURUSU, and I repeated again with reference to that
11 question, that that was the fact.

12 Q Then what is your answer to the question,
13 "And was that not done with the real intention of
14 holding the United States off by continuing to talk
15 peace while preparing to attack?"

16 A That there was not such a thing.

17 THE PRESIDENT: Before proceeding with the
18 remainder of my re-examination I should like to ask
19 an adjournment for a consultation.

20 THE PRESIDENT: We will adjourn until half-
21 past one.

22 (Whereupon, at 11:50, a recess

23 was taken.)

24 I said that was a fact in answer to the question
25 relating to my telephone conversation with Ambassador
KURUSU, and I repeated again with reference to that
question, that that was the fact.

Q Then what is your answer to the question,

"And was that not done with the real intention of

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AFTERNOON SESSION

1
2 The Tribunal met, pursuant to recess, at
3 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now in session.

6 THE PRESIDENT: With the Tribunal's permis-
7 sion, the accused ARAKI will be conferring with his
8 counsel for the whole of the afternoon.

9 Major Blakeney.

10
11 K U M A I C H I Y A M A M O T O, resumed the
12 stand and testified through Japanese inter-
13 preters as follows:

REDIRECT EXAMINATION

14
15 BY MR. BLAKENEY (Continued):

16 Q Mr. Witness, referring to the copy, typed
17 with additions, of this draft, "Outline of Future
18 Diplomatic Measures," exhibit 2975-A, and the various
19 exhibits which are copies thereof, I believe you have
20 not been asked and I therefore now ask you whether
21 you ordered the typing, with the additions, of that
22 draft.

23 A I have no recollection whatsoever that I
24 ever gave such instructions.

25 Q Now, you stated that this draft was prepared

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1 and submitted to you -- I am not referring to the
2 retyped one but to the original draft -- that it was
3 prepared and submitted to you about the 28th of
4 November. I want to ask you whether other drafts of
5 proposals or policies were submitted to you about
6 that same time in connection with this matter.

7 A I recall that at that time drafts and other
8 verbal opinions were brought to my attention in con-
9 nection with the Japanese-American negotiations.

10 Q Exhibit 2975 includes some additional phrases
11 inserted by you in pencil. I want you to look at the
12 original of that document and state to the Tribunal
13 what was your intention in adding the words which
14 appear in the first paragraph that, "We should make
15 it our main object to guard lest the real intentions
16 of the Empire be perceived?"

17 A All the telegrams in connection with the
18 note of the -- the United States note of November 26th
19 reached my hands during the morning of the 28th of
20 November. During all my years as a diplomat, this
21 was the most sorrowful day that I ever experienced.
22 My feeling was that if the United States did not re-
23 consider its attitude with regard to the Japanese-
24 American negotiations, there were no prospects of it
25 ever reaching a successful culmination, and I regarded

1 the Japanese-American negotiations -- I regarded that
2 the discontinuance of the negotiations were absolutely
3 unavoidable. However, at that time there was yet no
4 decision with regard to the opening of hostilities or
5 with regard to the discontinuance of the negotiations.
6 However, there was some room -- consequently, there
7 was some room for the continuance of the negotiations
8 with some solution still possible. We, in the Foreign
9 Office, did not lose any hope in the successful ter-
10 mination of the negotiations, and therefore we felt
11 that if the idea which we had that the discontinuance
12 of the negotiations was unavoidable ever reached the
13 ears of the United States, we believed that it would
14 be prejudicial to the future negotiations between the
15 two countries. Thus, I myself took hold of a pencil
16 and wrote in notes cautioning that utmost care be
17 given to this matter, so that such a belief on our
18 part would not leak to the American side.

19 And, I again wish to emphasize that in such
20 a case, we must handle the matter in good faith and
21 earnestness, and therefore I made notations to that
22 effect.

23 Q You mean you made such notations in the draft?

24 A Yes.

25 Q You stated earlier that you yourself had

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1 prepared a draft of a final notification which included
2 the words, in effect, "Japan therefore reserves free-
3 dom of action," and you stated that that phrase did
4 not appear in the draft ultimately adopted. Will you
5 now state why that phrase was omitted from the final
6 draft.

7 A In the Liaison Conference, it was decided
8 that the words be limited to the discontinuance of
9 negotiations, and therefore the text was limited to
10 those words, "Discontinuance of negotiations."

11 Q You were cross-examined about the connection
12 of this draft, exhibit 2975, with the question of a
13 surprise attack on the United States and specifically
14 in connection with the position of Admiral ITO. I
15 want to ask you whether any conversations had been
16 held by you or by anyone, to your knowledge, with
17 Admiral ITO prior to the date of this draft in ques-
18 tion.

19 A There was no conversation in connection with
20 the matter just pointed out by you -- just referred to
21 by you.

22 Q And I want to ask you further whether the
23 question or suggestion of a surprise attack had come
24 up in any way prior to the preparation of this draft
25 in question.

1 A I heard the words, "Surprise attack," for
2 the first time on the 2nd of December at the Liaison
3 Conference. I never heard these words before that.

4 MR. BLAKENEY: That concludes my re-
5 examination.

6 I ask that the witness be released on the
7 usual terms.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, I
10 would like to ask several questions.

11 RE CROSS-EXAMINATION

12 BY MR. TAVENNER:

13 Q You stated, in reply to a question propounded
14 to you, that you were presented with another or other
15 documents besides the one which bears exhibit No. 2975.
16 State precisely what document you refer to as being
17 presented to you.

18 A I have no clear recollection at this time,
19 but in those days various documents were brought to
20 me. Some were comments and criticisms on the United
21 States note; some were documents advocating contin-
22 uation of the negotiations. In any case, they were
23 all private views, and there were many, and I do not
24 have any clear recollection of each and every one of
25 them.

1 Q Were they filed in the archives of the Foreign
2 Ministry as was true of document 2975?

3 A I believe that such private views of a very
4 light nature were disposed of at the time, and so for
5 the most part they were not recorded in the files of
6 the Foreign Office.

7 Q But, your document entitled, "Outline of
8 Future Diplomatic Measures," was given the state
9 secret seal and was filed with the archives.

10 Regardless of your testimony this afternoon
11 what you did write in that document 2975 in your own
12 hand was, "We should make it our main object for the
13 time being to strictly guard lest the real intention
14 of the Empire be perceived." Now, you do not claim
15 that you -- you do not now claim that you did not
16 write those words, do you?

17 MR. BLAKENEY: I object to the question as
18 not being cross-examination growing out of any re-
19 examination.

20 THE PRESIDENT: It is very difficult to say
21 that it isn't.

22 Objection overruled.

23 I recollect his answer this morning to the
24 unanswered question yesterday.

25 A I do not deny it.

1 Q You, of course, on such an important matter
2 chose each word carefully, did you not, especially
3 when you were making alterations in a top secret
4 document already prepared?

5 MR. BLAKENEY: I must object again that this
6 in no way arises out of the re-examination. The wit-
7 ness has never denied he wrote the words. He has
8 admitted the writing. He has explained his intention,
9 and counsel, I submit, is now only arguing with him.

10 MR. TAVENNER: If it please the Tribunal,
11 defense counsel endeavored to place a somewhat differ-
12 ent import upon the meaning of this language in his
13 redirect examination.

14 MR. BLAKENEY: Defense counsel attempted no
15 construction of the language whatever. He asked the
16 witness his intention in writing the words, and the
17 witness answered.

18 THE PRESIDENT: I can only regard, "intention,"
19 there as meaning, "meaning." In other words, he asked
20 the construction.

21 MR. TAVENNER: That is right.

22 THE PRESIDENT: Objection overruled.

23 Q Please answer the question.

24 A May I have the question repeated?

25 THE INTERPRETER: Mr. Tavenner, will you

al

23

excuse...

24

25

1 Q You, of course, on such an important matter
2 chose each word carefully, did you not, especially
3 when you were making alterations in a top secret
4 document already prepared?

5 MR. BLAKENEY: I must object again that this
6 in no way arises out of the re-examination. The wit-
7 ness has never denied he wrote the words. He has
8 admitted the writing. He has explained his intention,
9 and counsel, I submit, is now only arguing with him.

10 MR. TAVENNER: If it please the Tribunal,
11 defense counsel endeavored to place a somewhat differ-
12 ent import upon the meaning of this language in his
13 redirect examination.

14 MR. BLAKENEY: Defense counsel attempted no
15 construction of the language whatever. He asked the
16 witness his intention in writing the words, and the
17 witness answered.

18 THE PRESIDENT: I can only regard, "intention,"
19 there as meaning, "meaning." In other words, he asked
20 the construction.

21 MR. TAVENNER: That is right.

22 THE PRESIDENT: Objection overruled.

23 Q Please answer the question.

24 A May I have the question repeated?

25 THE INTERPRETER: Mr. Tavenner, will you

1 kindly repeat your question?

2 Q I said, you, of course, on such an important
3 matter chose each word with great care especially in
4 view of the fact that you were making alterations in
5 a top secret document which had already been reduced
6 to writing.

7 A I handled all matters with the greatest of
8 care.

9 MR. TAVENNER: That complete my recross-
10 examination.

11 With regard to the matter of releasing this
12 witness, the prosecution requests that the witness
13 be advised not to leave Tokyo without permission of
14 the Tribunal for the period of the next three weeks.
15 I understand the witness lives in Tokyo.

16 MR. BLAKENEY: But I think that release on
17 the usual terms should achieve the prosecution's
18 object. I don't believe the witness intends to escape,
19 but he may have business, I don't know.

20 THE PRESIDENT: That had better be a subject
21 of application in Chambers where we could get full
22 reasons from the prosecution for the application.

23 A colleague wishes enlightenment on this
24 matter, Mr. Blakeney: You asked for time for consul-
25 tation before the luncheon adjournment. With whom

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1 did you consult?

2 MR. BLAKENEY: I have never before been asked
3 such a question in my career, and, although I have no
4 objection to answering it, I wonder if the Tribunal
5 should not care to consider the matter carefully before
6 asking counsel with whom he consulted in the defense
7 of his client. If it is the Tribunal's desire that
8 I answer, I will do so, but I will do so under the
9 protest that I am being placed in a position which is
10 inimical to the proper defense of my client, which is
11 imposing a stigma on the position of defense counsel
12 which is not applied to prosecution counsel.

13 THE PRESIDENT: In view of your protest, I
14 will consult my colleagues before pressing for an
15 answer.

16 MR. BLAKENEY: Then, may the witness be re-
17 leased on such terms as seem fitting at the time?

18 THE PRESIDENT: He is released on the usual
19 terms, but I will deal with any application at the
20 mid-afternoon recess.

21 (Whereupon, the witness was
22 excused.)
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1 MR. BLAKENEY: Before concluding with the matter
2 of the testimony of this witness I should like to
3 point out that Mr. Tavenner this morning made some
4 remarks concerning the inability of the prosecution
5 to obtain documents, remarks which seemed to me to
6 be, in effect, if not in intention, designed to reflect
7 upon the defense. I therefore wish to say only---

8 THE PRESIDENT: I did not take it so. It
9 may reflect upon the Japanese Government, which I do
10 not identify with the defense.

11 MR. BLAKENEY: I should, however, like to
12 say that to the best of my knowledge every document
13 of Japanese origin which I have presented in this
14 defense is a copy of an original taken by the prose-
15 cution from the Foreign Office, and now held by the
16 prosecution, and which I am quite willing to assume
17 would be made available by the prosecution upon
18 request. That being the case, however, I should
19 like to call upon the prosecution to specify which
20 of the documents heretofore presented by me came to
21 them as a surprise because they had been unable to
22 obtain the originals or copies of the same documents.

23 THE PRESIDENT: We understand that that re-
24 fers to the documents tendered in the course of the
25 examination. We may be wrong. Prosecution can en-

1 lighten us.

2 Mr. Tavenner.

3 MR. TAVENNER: My statement, your Honor, was
4 to this effect: that there were documents that appear-
5 ed in the course of the defense case which we thought
6 we should have obtained in response to our request.
7 When I thought that there were documents that had
8 not been received in response to our request, I made
9 the inquiry that I described to you, and as a result
10 obtained the documents which we have introduced dur-
11 ing the period of cross-examination, and other docu-
12 ments which we had never seen before. I think that
13 explains it.

14 MR. BLAKENEY: My question was, which of the
15 documents which appeared in the defense case occasion-
16 ed that activity of the prosecution? and I might say
17 that my request is made only because I feel that
18 this matter of documents is of interest and import-
19 ance to all concerned. In this connection, the
20 Tribunal will remember that some of the missing
21 originals were discovered by the prosecution in
22 their own files, as was announced a few days ago,
23 and we wish to know, equally with the prosecution,
24 the exact facts concerned in relation to the custody,
25 trovenance and original location of these documents.

1 THE PRESIDENT: They said they are documents
2 they had never seen before, so they can not be any
3 documents that you have tendered in evidence, and we
4 are not concerned with any others yet.

5 MR. BLAKENEY: Well, I have the opposite
6 understanding, if your Honor please, but Mr. Tavenner
7 declines to answer my question, so I will drop the
8 matter.

9 I now come, in my order of proof, to Exhibit
10 No. 2971, from which I was reading at yesterday's
11 recess. I resume the reading at the top of page 5,
12 marked page 933:

13 "Mr. Gearhart. When was the conference com-
14 pleted insofar as the determination to send a message
15 was concerned?

16 "General Miles. I wrote on that same day,
17 December 15, that Colonel Bratton looked at his watch
18 on delivering General Marshall's message to the Signal
19 Corps, and the time was 11:50 a.m."

20 From the "Testimony of Lt. Gen. Leonard Town-
21 send Gerow, United States Army.

22 "Mr. Mitchell (general counsel). General
23 Gerow, will you state your present rank and station?

24 "General Gerow. Leonard T. Gerow, lieuten-
25 ant general; station, Fort Leavenworth, Kans.

1 "Mr. Mitchell. Were you in the War Plans
2 Division in the War Department in 1941?

3 "General Gerow. Yes, sir.

4 "Mr. Mitchell. When did you receive that
5 assignment?

6 "General Gerow. I reported, sir, in November
7 1940, and left the War Plans Division in February 1942.

8 "Mr. Mitchell. You were head of the War Plans
9 Division during that period?

10 "General Gerow. Yes, sir; Assistant Chief
11 of Staff of War Plans Division."

12

13 "Mr. Mitchell. Yes. You may. Just a part
14 of the regulations relating to the War Plans Division.

15 "General Gerow. Yes, sir. I quote paragraph
16 12:

17 "War Plans Division, general duties:

18 "a. The War Plans Division is charged, in
19 general, with those duties of the War Department Gen-
20 eral Staff which relate to the formulation of plans
21 for the use in the theatre of war of the military
22 forces, separately or in conjunction with the naval
23 forces, in the national defense.

24 "b. The War Plans Division is specifically
25 charged with the preparation of plans and policies and

1 the supervision of activities concerning--

2 "(1) Location and armament of coast and land fortif-
3 ications;

4 "(2) Estimate of forces required and times at which
5 they may be needed under the various possible conditions
6 necessitating the use of troops in the national defense;

7 "(3) The initial strategical deployment (plans and
8 orders for the movement of troops to execute the init-
9 ial deployment to be the duty of the Operations and
10 Training Division);

11 "(4) Actual operations in the theatre of war;

12 "(5) Consultation with the Operations and Training
13 Division and the Supply Division on major items of equip-
14 ment.

15 "Those are the responsibilities of War Plans Divis-
16 ion, 1941, sir."

17

18 "General Gerow. Well the first time the 14-
19 part message or the 1 p.m. message was in the office
20 of the Chief of Staff on the morning of December 7th
21 was about 11:30 o'clock."

22

23 "Testimony of General of the Armies George C.
24 Marshall, Special Envoy to China.

25 "Mr. Mitchell. Now, when we closed last even-

1 ing I had just asked you a question. I will repeat it
2 now: 'Do you remember this diplomatic message from
3 Tokyo to their Ambassadors here, what we call for
4 short the 14 part message and the 1 P.M. message?'
5 Your answer was, 'Yes, sir.'

6 'Will you state in your own way just when you first
7 knew about that and under what circumstances?'

8 And you got as far as saying: 'I first was aware of
9 this message when I reached the' -- and then we ad-
10 journed. Will you give us now the answer?

11 "General Marshall. When I reached the office
12 on the morning of Sunday, December the 7th."

13 I will omit from there to the last line on the
14 page:

15 "On my arrival there Colonel Bratton handed me
16 these intercepts which included the 14 sections of the
17 Japanese message, and I started reading them through.
18 You recall it is a rather lengthy document and of such
19 a nature that there were portions of it that I read
20 twice.

21 "When I reached the end of the document the
22 next sheet was the 1 o'clock message of December 7.

23 "Mr. Mitchell: That is the message that dir-
24 ected the Ambassadors to deliver this thing at 1:00
25 p.m. Sunday to the American Government?

1 "General Marshall. Yes, sir, that message.
2 That, of course, was indicative to me, and all the
3 others who came into the room, of some very definite
4 action at 1:00 o'clock, because that 1:00 o'clock was
5 Sunday and was in Washington and involved the Secretary
6 of State, all of which were rather unusual put together.

7 "I think that I immediately called Admiral
8 Stark on the phone and found he had seen the message,
9 and I proposed a message to our various commanders in
10 the Pacific region, the Philippines, Hawaii, the Carib-
11 bean, that is the Panama Canal, and the west coast,
12 which included Alaska. Admiral Stark felt that we
13 might confuse them, because we had given them an alert
14 and now we were adding something more to it.

15 "I hung up the phone, which was the White House
16 phone, and in longhand wrote out the message. My
17 recollection was that he called me back. I am told
18 now that the White House telephone records show that
19 I called him back. I had no recollection of reading
20 the message to him. I thought, on the contrary, he
21 called me just as I finished the message, saving the
22 last sentence.

23 "However, one way or the other, there was a
24 call or a conversation between Stark and myself, the
25 effect of which was he wished me to add to the message,

1 specifically 'Show this to your Naval officers', which
2 I did in longhand.

3 "I then directed Colonel Bratton to take it
4 immediately to the message center and start it. There
5 was a proposal then that we have it typed. The decis-
6 ion was there was no time for typing, and Colonel
7 Bratton left with the message.

8 "On his return I questioned him as to the
9 length of time involved and I could not make out wheth-
10 er or not he was talking about the time of encoding as
11 well as the time of dispatching and the time of receipt,
12 so I sent him back, accompanied by Colonel Bundy, the
13 officer in charge of the immediate details of all
14 Pacific affairs.

15 "They came back and gave me the estimates of
16 the time of deliveries in these various parts of the
17 world. My recollection is that I sent at least Colonel
18 Bundy back again, and I thought Colonel Bratton with
19 him. I believe others state that there was no third
20 trip. There were certainly two -- my own recollection
21 is there were three. However that may be, that was the
22 procedure on the dispatching of the message."
23

24

25 "Mr. Mitchell. Then at least you did read
the message and were in the act of preparing a warning

by 11:30 or 11:40?

1 "General Marshall. Yes, sir; 11:40 would be
2 quite evidently the completion of it, because I had it
3 all written except the last sentence.

4 "Mr. Mitchell. I will offer now, as Exhibit 61,
5 a photostat which reads as follows: "December 7, 1941."
6 It is typed.

7 "Memorandum for the Adjutant General (through
8 Secretary, General Staff)."

9 Here follows the exhibit which was already
10 read in evidence; I therefore skip to the end of the
11 message and resume:
12

13 "It has the signature of General Gerow on it.
14 Has the committee a copy?

15 "The Chairman. Yes.

16 "Mr. Mitchell. And the committee will note
17 that underneath it is a record: 'Radios as follows
18 dispatched 11:52 AM, 12-7-41 by Code Room, WDMC.'

19 "General Marshall. War Department Message
20 Center.

21 "Mr. Mitchell. And another was dispatched
22 12:05 to Manila, another one to Hawaii at 12:17; the
23 one to the Caribbean Command is blurred. It looks
24 like 12:00 o'clock, and the one to the Fourth Army
25 at San Francisco at 12:11."

I omit the remainder of this document.

1 That in fact the American Navy had considered
2 a Japanese war imminent since late November is shown
3 by defense document No. 1500-U-3, and excerpt from
4 Pearl Harbor Attack consisting of a war warning
5 message sent out by the Chief of Naval Operations
6 on 27 November 1941.
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1 MR. COMYNS CARR: May it please the Tribunal,
2 this document has already been tendered and rejected,
3 at page 25,627 of the record. In case the Tribunal
4 should now arrive at a different decision, may I
5 point out that there is an error in the date as
6 copied? In one place the date is correctly given
7 as November 27 and in another place incorrectly as
8 November 7.

9 The ground on which the objection was made
10 and sustained was that the matter of internal orders
11 given by United States officers to those under their
12 command is irrelevant to any issue before this Tribunal.
13 We are not concerned with the question which was before
14 the Pearl Harbor Committee, whether the United States
15 forces took adequate measures of security against
16 threatened Japanese attacks or not. The document was
17 tendered and rejected, together with a considerable
18 number of others bearing on the same allied, cognate
19 topics, and we ask that it be rejected again.

20 THE PRESIDENT: Major Blakeney.

21 MR. BLAKENEY: As the Tribunal has repeated-
22 ly pointed out and as I submit is self-evident, the
23 fact of prior rejection of a document is not at all
24 to the point. The document is now being tendered on
25 a ground the relevance of which is clearly deducible,

1 and, I might say, follows, without even a possibility
2 of discussion, from the documents which have immediate-
3 ly before been received in evidence. This document
4 is not offered in connection with any problem that was
5 before the Pearl Harbor Investigating Committee, nor
6 in connection with any internal steps taken by the
7 United States Navy. It is offered precisely on the
8 ground which I stated in my words tendering it, which
9 were as follows: that, in fact, the American Navy had
10 considered a Japanese war imminent since late November--
11 in other words, as proof of notice to the Navy, just
12 as General Marshall's message was received yesterday
13 as proof of notice to the Army of the imminence of
14 hostilities, and I submit that, in view of the rulings
15 which have gone before, the document is clearly ad-
16 missible and the objection can only be considered
17 frivolous.

18 THE PRESIDENT: By a majority the objection
19 is upheld and the document rejected again.

20 MR. BLAKENEY: As evidence of the knowledge
21 of Secretary of State Hull, Secretary of the Navy Knox,
22 and the Chief of Naval Operations of the immediacy of
23 war on the 6th or 7th of December, 1941, I offer in
24 evidence a further excerpt from Pearl Harbor Attack,
25 defense document 1500-H-6.

1 THE PRESIDENT: Mr. Tavenner.

2 MR. TAVENNER: If it please the Tribunal,
3 objection is made to the introduction of this docu-
4 ment on the same grounds as asserted for the rejec-
5 tion of the former document.

6 THE PRESIDENT: Was this rejected previously?

7 MR. BLAKENEY: If the Tribunal please, ad-
8 mission of the document is pressed on the same grounds
9 as were argued and accepted by the Tribunal in connec-
10 tion with the tenders of documents which are now
11 exhibits 2860 and 2861 -- I am sorry; I have the wrong
12 numbers. 2970 and 2974 I should have said.

13 THE PRESIDENT: This is repetitive in any
14 event. We have had all this before from others in a
15 higher station.

16 MR. BLAKENEY: It is true that we have had it
17 from others, but I had thought that the knowledge of
18 Secretary Hull, for example, was very significant.

19 THE PRESIDENT: We have knowledge imputed to
20 the President himself and the Chief of Staff. What
21 more do you want?

22 MR. BLAKENEY: All I want, sir, is for the
23 Tribunal to find that the United States Government had
24 notice, and if that is an indication that this is
25 cumulative, I will be glad to withdraw it.

1 THE PRESIDENT: By a majority the objection
2 is upheld and the document rejected.

3 MR. BLAKENEY: I shall now read some addi-
4 tional parts of Exhibit 2840, consisting of ex-
5 cerpts from the testimony of Cordell Hull before the
6 Joint Congressional Committee for the Investigation of
7 Pearl Harbor. I commence with the last paragraph on
8 page 3:

9 "VI. JAPANESE ULTIMATUM OF NOVEMBER 20
10 AND OUR REPLY

11 "On November 20 the Japanese Ambassador and
12 Mr. KURUSU presented to me a proposal which on its
13 face was extreme. I knew, as did other high officers
14 of the Government, from intercepted Japanese messages
15 supplied to me by the War and Navy Departments, that
16 this proposal was the final Japanese proposition --
17 an ultimatum."

18 I now skip to the last paragraph on page 5:

19 "To have accepted the Japanese proposal of
20 November 20 was clearly unthinkable. It would have
21 made the United States an ally of Japan in Japan's
22 program of conquest and aggressions and of collabora-
23 tion with Hitler. It would have meant yielding to
24 the Japanese demand that the United States abandon
25 its principles and policies. It would have meant

abject surrender of our position under intimidation.

1 "The situation was critical and virtually
2 hopeless. On the one hand our Government desired to
3 exhaust all possibilities of finding a means to a
4 peaceful solution and to avert or delay an armed clash,
5 especially as the heads of this country's armed forces
6 continued to emphasize the need of time to prepare for
7 resistance. On the other hand, Japan was calling for
8 a showdown.

9 "There the situation stood -- the Japanese
10 unyielding and intimidating in their demands and we
11 standing firmly for our principles.

12 "The chances of meeting the crisis by diplo-
13 macy had practically vanished. We had reached the
14 point of clutching at straws.

15 "Three possible choices presented themselves.

16 "Our Government might have made no reply.
17 The Japanese warlords could then have told their
18 people that the American Government not only would make
19 no reply but would also not offer any alternative.

20 "Our Government might have rejected flatly
21 the Japanese proposal. In that event the Japanese
22 warlords would be afforded a pretext, although wholly
23 false, for military attack.

24 "Our Government might endeavor to present a
25

1 reasonable counter-proposal.

2 "The last course was the one chosen.

3 "In considering the content of a counter-
4 proposal consideration was given to the inclusion
5 therein of a possible modus vivendi. Such a project
6 would have the advantages of showing our interest in
7 peace to the last and of exposing the Japanese some-
8 what in case they should not accept. It would, if it
9 had served to prolong the conversations, have gained
10 time for the Army and Navy to prepare. The project
11 of a modus vivendi was discussed and given intensive
12 consideration from November 22 to November 26 within
13 the Department of State, by the President, and by the
14 highest authorities of the Army and Navy. A first
15 draft was completed on November 22 and revised drafts
16 on November 24 and 25. It was also discussed with the
17 British, Australian, Dutch and Chinese Governments.

18 "The projected modus vivendi provided for
19 mutual pledges by the United States and Japan that
20 their national policies would be directed toward last-
21 ing peace; for mutual undertakings against advances by
22 military force or threat of force in the Pacific area;
23 for withdrawal by Japan of its armed forces from south-
24 ern Indochina; for a modification by the United States
25 of its freezing and export restrictions to permit re-

1 sumption of certain categories of trade, within cer-
2 tain specified limits, between the United States and
3 Japan; for the corresponding modification by Japan of
4 its freezing and export restrictions; and for an
5 approach by the United States to the Australian, Brit-
6 ish and Dutch Governments with a view to their taking
7 similar measures. There was also an affirmation by
8 the United States of its fundamental interest that any
9 settlement between the Japanese and Chinese Govern-
10 ments be based upon the principles of peace, law,
11 order, and justice. There was provision that the
12 modus vivendi would remain in force for three months
13 and would be subject to further extension.

14 "It was proposed as a vital part of the modus
15 vivendi at the same time to give to the Japanese for
16 their consideration an outline of a peace settlement
17 which might serve as a basis for working out a com-
18 prehensive settlement for the Pacific area along broad
19 lines. On November 11 there had been prepared in the
20 Division of Far Eastern Affairs for possible considera-
21 tion a draft of a proposal along broad lines. This
22 draft like others was drawn up with a view to keeping
23 the conversations going (and thus gaining time) and to
24 leading, if accepted, to an eventual comprehensive
25 settlement of a nature compatible with American prin-

1 ciples. This draft proposal contained statements
2 of general principles, including the four principles
3 which I had presented to the Japanese on April 16, and
4 a statement of principles in regard to economic policy.
5 Under this draft the United States would suggest to
6 the Chinese and Japanese Governments that they enter
7 into peace negotiations, and the Japanese Government
8 would offer the Chinese Government an armistice during
9 the period of the peace negotiations. The armistice
10 idea was dropped because it would have operated un-
11 fairly in Japan's favor.

12 "A further proposal to which I gave attention
13 was a revision in tentative form made by the Depart-
14 ment on November 19 of a draft of a proposed compre-
15 hensive settlement received from the Treasury Depart-
16 ment on the previous day. This tentative proposal was
17 discussed with the War and Navy Departments. In sub-
18 sequent revisions points to which objections were
19 raised by them were dropped. A third proposal which
20 I had under consideration was that of the modus viven-
21 di.

22 "That I considered presenting to the Japanese
23 from about November 22 to November 26 consisted of
24 our modus vivendi draft and an outline of a peace
25 settlement which might serve as a basis for working

1 out a comprehensive settlement for the Pacific area
2 along broad and just lines. This second and more
3 comprehensive part followed some of the lines set
4 forth in the November 11 draft and in the November
5 19 draft.

6 "While the modus vivendi proposal was still
7 under consideration, I emphasized the critical nature
8 of this country's relations with Japan at the meeting
9 of the War Council on November 25. The War Council,
10 which consisted of the President, the Secretaries of
11 State, War and Navy, the Chief of Staff and the Chief
12 of Naval Operations, was a sort of clearing house for
13 all the information and views which we were currently
14 discussing with our respective contacts and in our
15 respective circles. The high lights in the develop-
16 ments at a particular juncture were invariably reviewed
17 at those meetings. At that meeting I also gave
18 the estimate which I then had that the Japanese mili-
19 tary were already poised for attack. The Japanese
20 leaders were determined and desperate. They were
21 likely to break out anywhere, at any time, at any
22 place, and I emphasized the probable element of sur-
23 prise in their plans. I felt that virtually the last
24 stage had been reached and that the safeguarding of
25 our national security was in the hands of the Army and

1 the Navy.

2 "In a message of November 24 to Mr. Churchill,
3 telegraphed through the Department, President Roose-
4 velt added to an explanation of our proposed modus
5 vivendi the words, 'I am not very hopeful and we must
6 all be prepared for real trouble, possibly soon.'

7 "On the evening of November 25 and on Novem-
8 ber 26 I went over again the considerations relating
9 to our proposed plan, especially the modus vivendi
10 aspect.

11 "As I have indicated, all the successive
12 drafts, of November 22, of November 24 and of November
13 25 contained two things; (1) the possible modus viven-
14 di; and (2) a statement of principles, with a sugges-
15 ted example of how these principles could be applied --
16 that which has since been commonly described as the
17 10-point proposal.

18 "I and other high officers of our Government
19 knew that the Japanese military were poised for attack.
20 We know that the Japanese were demanding -- and had set
21 a time limit, first of November 25 and extended later
22 to November 29, for acceptance by our Government of
23 their extreme, last-word proposal of November 20.

24 "It was therefore my judgment, as it was that
25 of the President and other high officers, that the

1 chance of the Japanese accepting our proposal was
2 remote.

3 "So far as the modus vivendi aspect would have
4 appeared to the Japanese, it contained only a little
5 chicken feed in the shape of some cotton, oil and a
6 few other commodities in very limited quantities as
7 compared with the unlimited quantities the Japanese
8 were demanding.

9 "It was manifest that there would be widespread
10 opposition from American opinion to the modus vivendi
11 aspect of the proposal especially to the supplying to
12 Japan of even limited quantities of oil. The Chinese
13 Government violently opposed the idea. The other
14 interested governments were sympathetic to the Chinese
15 view and fundamentally were unfavorable or lukewarm.
16 Their cooperation was a part of the plan. It devel-
17 oped that the conclusion with Japan of such an arrange-
18 ment would have been a major blow to Chinese morale.
19 In view of these considerations it became clear that
20 the slight prospects of Japan's agreeing to the modus
21 vivendi did not warrant assuming the risks involved in
22 proceeding with it, especially the serious risk of
23 collapse of Chinese morale and resistance and even of
24 disintegration of China. It therefore became perfect-
25 ly evident that the modus vivendi aspect would not be

feasible."

1 I omit the next several pages and resume
2 reading on page 13 with the second paragraph.

3 THE PRESIDENT: We will recess for fifteen
4 minutes.

5 (Whereupon, at 1445, a recess was taken
6 until 1500, after which the proceedings were
7 resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: I continue reading from
5 exhibit 2840, beginning now on page 13 with the
6 second paragraph:

7 "On November 26 following delivery of our
8 Government's proposal to the Japanese Ambassador,
9 correspondents were informed by an official of the
10 Department of State that the Japanese representatives
11 had been handed a document for their consideration.
12 This document, they were informed, was the culmina-
13 tion of conferences during recent weeks and rested
14 on certain basic principles with which the correspond-
15 ents would be entirely familiar in the light of many
16 repetitions.

17 "On November 27 I had a special and lengthy
18 press conference at which I told the correspondents
19 they were free to use the information given them as
20 their own or as having come from authoritative
21 sources."

22 I omit everything from there to page 16
23 where I commence with the fourth paragraph from the
24 bottom beginning with "On November 28."

25 "On November 28, at a meeting of the War

1 Council, I reviewed the November 26 proposal which
2 we had made to the Japanese, and pointed out that
3 there was practically no possibility of an agreement
4 being achieved with Japan. I emphasized that in my
5 opinion the Japanese were likely to break out at any
6 time with new acts of conquest and that the matter
7 of safeguarding our national security was in the
8 hands of the Army and the Navy. With due deference
9 I expressed my judgment that any plans for our
10 military defense should include an assumption that
11 the Japanese might make the element of surprise a
12 central point in their strategy and also might
13 attack at various points simultaneously with a view
14 to demoralizing efforts of defense and of coordination.

15 "On November 29 I expressed substantially
16 the same views to the British Ambassador.

17 "I said the same things all during those
18 days to many of my contacts.

19 "On November 25 the American Consul at Hanoi,
20 Indo-China, had communicated to the Department a
21 report that the Japanese intended to launch an attack
22 on the Kra Peninsula about December 1, and he reported
23 also further landings of troops and military equip-
24 ment in Indo-China in addition to landings he had
25 previously reported from time to time. On November 26

1 the American Consul at Saigon had reported the
2 arrival of heavy Japanese reinforcements in Southern
3 Indo-China, supplementing arrivals he had reported
4 earlier that month. On November 29 the Department
5 of State instructed its posts in Southeast Asia to
6 telegraph information of military or naval movements
7 directly to Manila for the Commander in Chief of the
8 United States Asiatic Fleet.

9 "On November 30, I was informed by the
10 British Ambassador that the British Government had
11 important indications that Japan was about to attack
12 Siam and that this attack would include a sea-borne
13 expedition to seize strategic points in the Kra
14 Isthmus.

15 "In a message from Premier TOJO to a public
16 rally on November 30 under the sponsorship of the
17 Imperial Rule Assistance Association and the 'Great
18 Japan East Asia League' he stated among other things
19 that:

20 "'The fact that Chiang Kai-shek is dancing
21 to the tune of Britain, America and communism at the
22 expense of able-bodied and promising young men in
23 his futile resistance against Japan is only due to
24 the desire of Britain and the United States to fish
25 in the troubled waters of East Asia by pitting the

1 East Asiatic peoples against each other and to grasp
2 the hegemony of East Asia. This is a stock in trade
3 of Britain and the United States.

4 "For the honor and pride of mankind we
5 must purge this sort of practice from East Asia with
6 a vengeance."

7 "On that day, Sunday, November 30, after
8 conferring with our military regarding the Japanese
9 Prime Minister's bellicose statement and the increasing
10 gravity of the Far Eastern situation, I telephoned
11 the President at Warm Springs and advised him to
12 advance the date of his return to Washington. Accord-
13 ingly, the President returned to Washington on
14 December 1."

15 And I stop reading at that point.

16 In connection with the speech of Premier
17 TOJO referred to by Secretary Hull I offer in evidence
18 defense document 1401-B-3, a telegram of inquiry
19 from Admiral NOMURA to Tokyo concerning it.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document
22 No. 1401-B-3 will receive exhibit No. 2976.

23 (Whereupon, the document above
24 referred to was marked defense exhibit
25 No. 2976 and received in evidence.)

1 THE PRESIDENT: This seems familiar, Major
2 Blakeney.

3 MR. BLAKENEY: I do not think it has been
4 read before, your Honor; I do not remember at all
5 events.

6 THE PRESIDENT: As I said before, we read
7 a lot of this before we came to Japan.

8 MR. BLAKENEY: I read the exhibit, which is
9 a telegram from NOMURA to TOGO, dated 30 November 1941:

10 "The newspapers of the 30th reported an
11 address of Premier TOJO under big headlines, and
12 special importance was attached to the expression
13 therein that the 'exploitation' of the Asiatic
14 peoples by the British and Americans 'must be purged
15 with a vengeance.' Meanwhile, the White House
16 secretary announced, according to the press, that
17 Secretary Hull promptly reported the speech by tele-
18 phone to the President, who was taking a rest at
19 Warm Springs, and that the President suddenly changed
20 his program and left there in the afternoon of the
21 30th for Washington, which he was to reach on the
22 morning of the 1st. As it is feared that the American
23 Government may use the address as material for their
24 propaganda, please take appropriate steps in connec-
25 tion with it and send its text (in Japanese and English)

1 to me promptly."

2 As the explanation made by the Foreign
3 Ministry of the matter after the Embassy had inquired
4 concerning it, I offer in evidence defense document
5 1401-C-3.

6 THE PRESIDENT: Admitted on the usual terms.

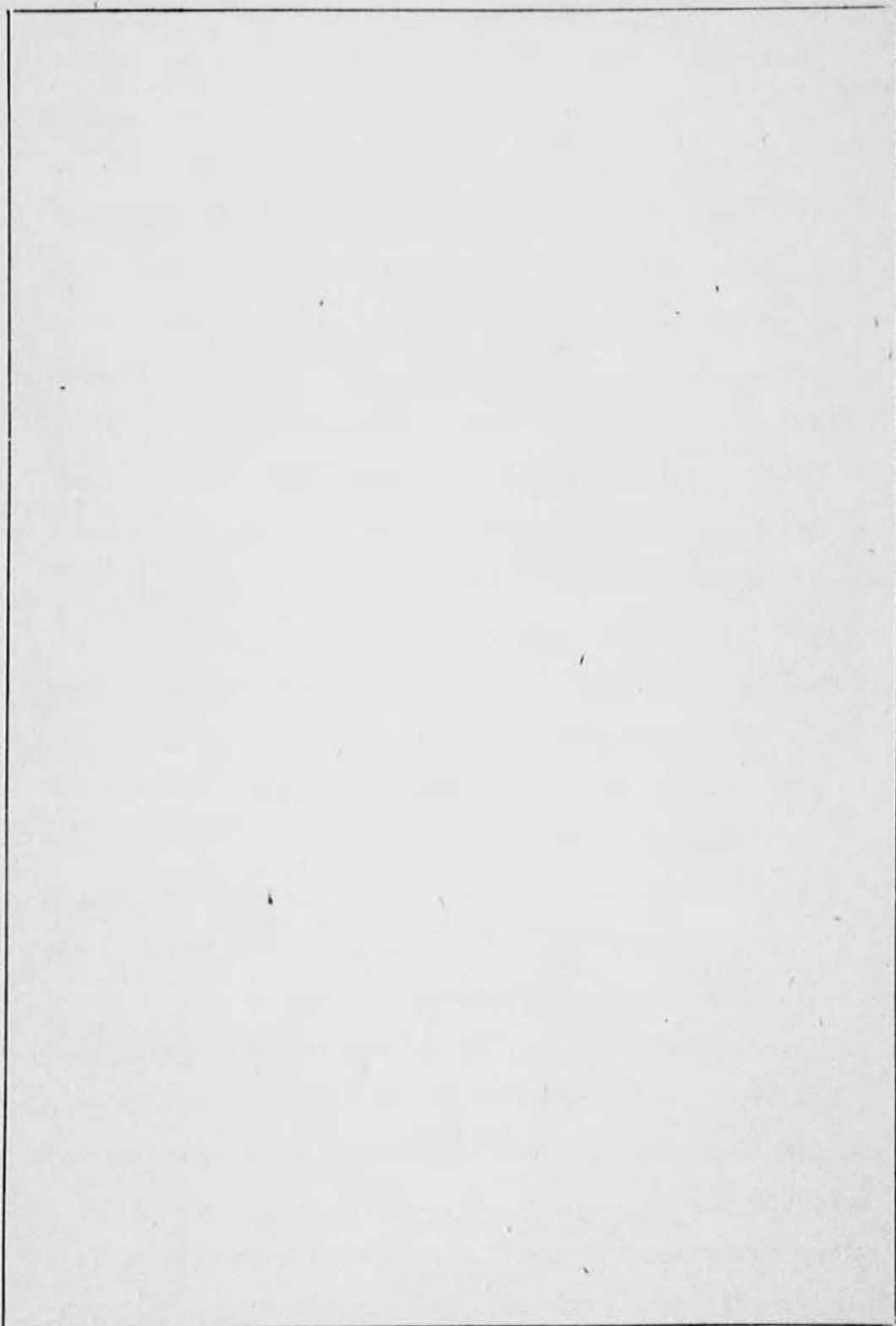
7 CLERK OF THE COURT: Defense document
8 1401-C-3 will receive exhibit No. 2977.

9 . (Whereupon, the document above
10 referred to was marked defense exhibit
11 No. 2977 and received in evidence.)

12 MR. BLAKENEY: I read the document, which
13 is a telegram from TOGO to NOMURA, dated 1 December
14 1941:

15 "Premier TOJO's address in question was
16 delivered on the occasion of the meeting, held on
17 30 November under the auspices of the Koa Domei,
18 celebrating the anniversary of the conclusion of
19 the Treaty of Basic Relations between Japan and
20 China. It was drafted by the administrative office
21 of that organization. The draft was handed to the
22 press at their request in the evening of the 29th,
23 without due inspection by the Premier and other
24 Government authorities, as the 30th was Sunday and
25 there were to be no evening editions.

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1 of the Japanese Embassy (TERASAKI) to Mr. Joseph W.
2 Ballantine on December 2, 1941.

3 "The so-called speech of Premier Hideki
4 TOJO was originally drafted by members of the office
5 staff of the East Asia Restoration League, a non-
6 governmental organization of which Mr. TOJO happens
7 to be President, as a congratulatory address to be
8 delivered on November 30, on the occasion commemorat-
9 ing the first anniversary of the conclusion of the
10 Treaty Concerning the Basic Relations between Japan
11 and China, under the auspices of the said League.

12 "However, November 30 happened to be Sunday;
13 the League staff gave out the manuscript to the news-
14 paper reporters upon their request on the night of
15 November 29 (Saturday), before the said draft was
16 examined by either the Premier himself or other
17 Government officials, and this unapproved manuscript
18 was printed in the metropolitan newspapers.

19 "As a matter of fact, the Premier himself
20 made no speech of any kind on the 30th. Moreover,
21 neither the Premier nor other government authorities
22 had any knowledge as to the content of the said speech.

23 "It should further be noted that the reported
24 statement 'For the honor and pride of mankind we must
25 purge this sort of practice from East Asia with a

1 vengeance' is a mistranslation of the original text.
2 There is, in the original text, no such expression
3 as 'purge' or 'with a vengeance.' The correct trans-
4 lation of the statement should be 'For the honor and
5 pride of mankind, this sort of practice must be re-
6 moved.'"

7 I return to exhibit 2840 to read one or two
8 additional passages, first from page 18, the fifth
9 paragraph:

10 "Throughout the critical years culminating
11 in Pearl Harbor and especially during the last months,
12 the President, the Secretary of State, the Secretary
13 of War, the Secretary of the Navy and the heads of
14 our armed services kept in constant touch with each
15 other. There was the freest interchange of informa-
16 tion and views. It was customary for us to pick up
17 the telephone and for the caller to ask one of the
18 others whether he had anything new of significance on
19 the situation and to communicate whatever the caller
20 may have had that was new. These exchanges of informa-
21 tion and views were in addition to those which took
22 place at Cabinet meetings and at meetings during the
23 fall of 1941 of the War Council, and in numerous other
24 conversations."
25

I pass to page 19, commencing with the second

1 paragraph:

2 "Mr. Gesell: Well now, at about this time
3 Secretary Stimson reports that there was a meeting
4 at the White House, on the 25th of November, at
5 which you and Secretary Knox and himself were pres-
6 ent, and General Marshall and Admiral Stark.

7 "He says there: 'The President brought up
8 the relations with the Japanese. He brought up the
9 event that we were likely to be attacked, as soon as,
10 perhaps, next Monday, for the Japanese are notorious
11 for making an attack without warning, and the ques-
12 tion was what we should do. We conferred on the
13 general problem.'

14 "Do you remember any conferences at that
15 time or at about that time with the War Council as
16 to what should be done about the general problem?

17 "Mr. Hull: The main point I was making
18 during those and subsequent days was the very great
19 improbability that Japan would seriously continue to
20 participate in any conversations. We had learned
21 through the interceptions not only that they had
22 determined on their ultimatum but that they had ordered
23 that conversations cease on the 25th, and then finally
24 they worried me almost sick after the 20th about
25 getting a quick reply.

1 "The Vice Chairman: Then you did regard
2 the Japanese proposal of November 20 as nothing but
3 an ultimatum?

4 "Mr. Hull: Well, they said so both in
5 writing and orally and we could only regard it as
6 that from its very nature.

7 "The Vice Chairman: Now, was your reply of
8 November 26 in any sense an ultimatum?

9 "Mr. Hull: Well, the truth is we were most
10 anxious, as we have said here at different times, to
11 go forward with the conversations, and we had every
12 motive to desire to go forward with them, and we
13 offered this, as I say, as an ordinary, normal plan
14 for international relations, on these lines, and I
15 think everybody in the State Department, the President
16 and others, were in agreement; and, as I say, the
17 Japanese would have found a way at once, all they had
18 to do was to announce that they were through with
19 conquest and aggression and automatically they would
20 have become the beneficiaries of these proposals."

21 With that I leave this document.
22

23 Additional excerpts from the testimony of
24 Secretary Hull before the Congressional Committee are
25 offered in elucidation of the American attitude toward
the Japanese-American negotiations, defense document

1 1500-L-6.

2 THE PRESIDENT: Mr. Tavenner.

3 MR. TAVENNER: If the Tribunal please, the
4 same objection is made to the introduction of this
5 document in evidence as was successfully made to
6 documents 1500-U-3 and 1500-H-6, which were rejected
7 just prior to the recess. In addition, there are
8 some paragraphs which are duplications of document
9 2840, for instance, the last two paragraphs on page
10 1, and there are others.

11 MR. BLAKENEY: In answer I should say that
12 I did not propose to read any parts which were
13 apparently in duplication of evidence already re-
14 ceived. As for the general objection which was
15 stated as being "the same one successfully made
16 against earlier documents," the earlier document was
17 objected to so far as I know on the grounds that it
18 involved the internal military arrangements of the
19 United States. This document is testimony of Cordell
20 Hull, Secretary of State, about the negotiations which
21 he conducted with Japan in which he states what his
22 and his government's intentions were, what his and
23 his government's estimate of Japanese intentions
24 were, and how diplomatic relations developed and de-
25 teriorated.

1 THE PRESIDENT: It is the same story in
2 different words. It is repetitive and cumulative,
3 is it not?

4 MR. BLAKENEY: There are points covered
5 herein relative to the negotiations which, I believe,
6 are not covered in any other evidence so far offered.

7 THE PRESIDENT: Mr. Tavenner.

8 MR. TAVENNER: The diplomatic relations in
9 the main are covered by the two paragraphs on page 1,
10 which are duplications of evidence already admitted,
11 and the rest of this document deals with the same
12 question as documents 1500-U-3 and 1500-H-6, which
13 were rejected, namely, the realization on the part of
14 the United States that the situation was dangerous.

15 THE PRESIDENT: By a majority the Court
16 sustains the objection and rejects the document.

17 MR. BLAKENEY: As evidence of the existence
18 of an understanding between the United States and
19 Great Britain for parallel action to be taken against
20 Japan, I offer in evidence excerpts from the testimony
21 of Sumner Welles, Undersecretary of State of the
22 United States, concerning the proceedings had and the
23 agreement entered into between President Roosevelt
24 and Prime Minister Churchill at the Atlantic Conference
25 of August 1941, defense document 1500-K-6, an excerpt

1 from "Pearl Harbor Attack."

2 THE PRESIDENT: Mr. Tavenner.

3 MR. TAVENNER: If the Tribunal please, the
4 objection is made that this document is irrelevant
5 and immaterial. The same subject matter has been re-
6 jected heretofore by the Tribunal. This document is
7 particularly objectionable in view of the fact that
8 reference is made to a rumor which the witness in the
9 course of the Pearl Harbor Inquiry denied.

10 MR. BLAKENEY: Of course, the witness denies
11 the rumor and explains the facts in this excerpt;
12 that is what it is offered for. As to the materiality
13 or otherwise of the subject matter, I have a word to
14 say.

15
16 The Tribunal has heretofore received in
17 evidence the proof of actions taken by the United
18 States in connection with the Japanese-American
19 negotiations and specifically has received evidence
20 of the warning delivered by President Roosevelt to
21 Japan immediately upon his return from the Atlantic
22 Conference, and of the President's invitation to the
23 Japanese representatives at that time to resumption
24 of the negotiations. The evidence now tendered to the
25 Tribunal has the effect of showing that those steps
were taken in accordance with American-British

1 understanding and would enable the Tribunal, I
2 submit, to determine the question of the extent of
3 the participation by Great Britain in these negotia-
4 tions as well as helping to determine the question
5 of the extent of international military action against
6 Japan, if any. I therefore submit that the document
7 is relevant and should be received.
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1 THE PRESIDENT: We have many documents show-
2 ing British and American understanding and coopera-
3 tion. This has about the effect of those.

4 By a majority the Court sustains the objec-
5 tion and rejects the document.

6 MR. BLAKENEY: For the record I wish to
7 offer in evidence, as additional evidence of consulta-
8 tion and parallel action between the United States and
9 Great Britain, defense document 1500-D-6, further
10 excerpts from the testimony of Mr. Welles, and I con-
11 cede that the same ruling should apply if objection
12 is made.

13 MR. TAVENNER: If the Tribunal please, the
14 first half of this document we concede is relevant;
15 the last half, as indicated by counsel, we think is
16 covered by the ruling just made and should be rejected.
17 Therefore, our position is that the first part of the
18 document down to the four dots across the center of the
19 page is admissible, and we concede that, and the last
20 is not.

21 THE PRESIDENT: The objection is sustained
22 as to the second part. It is admitted to the extent
23 conceded by Mr. Tavenner.

24 MR. BLAKENEY: I do not think half of the
25 document has any significance, and I will withdraw it.

1 MR. TAVENNER: I understood, your Honor,
2 that the document had been admitted, and therefore it
3 is too late now to withdraw a document already ad-
4 mitted.

5 THE PRESIDENT: Yes, we must concede that.
6 Give it a number and read it.

7 CLERK OF THE COURT: Part 2 of the Pearl
8 Harbor Attack series will receive exhibit No. 2979
9 for identification only. The excerpt therefrom,
10 bearing defense document No. 1500-D-6 will receive
11 exhibit No. 2979-A.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 2979 for identification; and the excerpt
15 therefrom, bearing defense document No. 1500-D-6,
16 was marked defense exhibit No. 2979-A and re-
17 ceived in evidence.)

18 THE PRESIDENT: You are not obliged to read
19 any part of it, Mr. Blakeney.

20 MR. BLAKENEY: I am not reading any part of
21 it, your Honor.

22 THE PRESIDENT: Mr. Tavenner.

23 MR. TAVENNER: If the Tribunal please, may
24 I read it?

25 THE PRESIDENT: No.

MR. BLAKENEY: In your case.

1 I turn now to a group of documents on
2 another point -- the question of the extent of the
3 right of self-defense, particularly in connection
4 with the Kellogg-Briand Pact. First of these to be
5 offered in evidence is defense document 1957,
6 excerpts from the Department of State's THE GENERAL
7 PACT FOR THE RENUNCIATION OF WAR, the excerpts con-
8 sisting of notes exchanged among the various powers.

9 THE PRESIDENT: Mr. Comyns Carr.

10 MR. COMYNS CARR: May it please the Tribunal,
11 in regard to this group of documents we object on the
12 ground that in none of them except one has there been
13 any compliance with Rule 6-b(1). They are with one
14 exception excerpts and, so far as we have been able to
15 trace the matter, misleading excerpts, in our view,
16 from longer documents; and we would like to draw the
17 attention of the Tribunal to a practice which seems to
18 have grown up on the part of the defense to take
19 advantage of the leniency which we have shown in not
20 always insisting on compliance with this rule. That
21 is to say, not only do they tender to the Tribunal
22 as their ultimate exhibit something which is an ex-
23 cerpt, but they don't even tender the original, whole
24 document as the original exhibit, with the result that
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1 we don't have the opportunity of checking to see
2 how far the excerpt is a proper one and how far it
3 ought to be supplemented. May I draw the attention
4 of the Tribunal in that connection to page 24,897
5 of the record, where, on the testimony of the witness
6 OKADA, we drew the attention of the Tribunal to the
7 fact that he had produced only parts of documents
8 which he said were in his possession. We asked where
9 the whole of the documents were. First of all, we
10 were told they were in the hands of Dr. KIYOSE; then
11 we were told that they had been filed in the Clerk's
12 office. The latter statement turns out to be com-
13 pletely erroneous, and we haven't seen them yet.

14 THE PRESIDENT: Mr. Carr, we judicially
15 notice the Pact of Paris and everything which is
16 necessary for its correct interpretation. Some of us
17 may think that we can look beyond the clear words of
18 the pact to find out what is the real meaning of the
19 statements made by those responsible for bringing it
20 about. Others may take the view that we are bound by
21 the clear words. At all events, it may not be
22 necessary to prove these statements by Mr. Kellogg,
23 perhaps, or Mr. Stimson, or Mr. Briand; that we should
24 judicially notice this if they really bear on the in-
25 terpretation of the treaty. But that is a matter that

1 probably we would prefer to discuss among ourselves
2 before dealing with these documents.

3 MR. COMYNS CARR: Yes.

4 THE PRESIDENT: I think that we have all
5 those matters which are pressed on us now, if I
6 understand this document rightly.

7 MR. COMYNS CARR: If the Tribunal proposes
8 to take judicial notice of the whole documents, we
9 of course have no objection. We are objecting to his
10 garbled extracts being put in as evidence
11 without compliance with the rules of the Tribunal.

12 Your Honor, may I take the opportunity, as
13 I have raised the whole subject, to ask for an order
14 of the Tribunal that the two documents exhibited to
15 the affidavit of OKADA, which were said to be deposited
16 with the Clerk and I am informed are not, should be
17 forthwith produced for our inspection?
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1 THE PRESIDENT: Major Blakeney.

2 MR. BLAKENEY: In connection with the OKADA
3 matter, I have no knowledge or information concerning
4 it. But if the documents in question are in the same
5 state as the original of the excerpt now under con-
6 sideration, counsel will find them at the clerk's desk,
7 because I have, within the last few minutes, personally
8 inquired of the clerk and been shown the original of
9 defense document 1957, which is on deposit there.

10 As to whether the excerpts are misleading,
11 garbled or deserve any of the other adjectives bestowed
12 on them by counsel, that is a matter which the Tribu-
13 nal can determine.

14 We do wish to direct the attention of the
15 Tribunal to these parts of the document which we are
16 here offering. Whether it be done by production of
17 evidence or by the Tribunal's taking judicial notice
18 is a matter of entire indifference to us, if it be
19 done. The difficulty, as I see it, on the judicial
20 notice question is to be able to tell from the record,
21 from the transcript, of what matters the Tribunal
22 is taking judicial notice.

23 THE PRESIDENT: We take judicial notice of
24 international law, at least. We say we do. And you
25 take judicial notice of everything that is necessary

1 to enable you to interpret it because anything that
2 could affect its interpretation would be on a very
3 high level.

4 MR. BLAKENEY: The difficulty that still,
5 with due deference, strikes me, your Honor, is that
6 as we all know, tribunals know many things of which
7 they do not take judicial notice, and actually they
8 do not know some of the things of which they do take
9 judicial notice.

10 THE PRESIDENT: I can safely say we have all
11 read the statements attributed to Mr. Stimson and
12 others as to the meaning of the pact or the meaning
13 they intended it to have. We know the reservations
14 made by the different nations when they signed.
15 All those things are known to us. You can find them
16 in the textbooks on international law.

17 MR. BLAKENEY: Perhaps if the Tribunal
18 could and would state that judicial notice would be
19 taken of the matters contained in these documents
20 plus the remainders of the documents from which they
21 are taken, we could solve the matter in that way.

22 THE PRESIDENT: If you have a publication
23 containing the full statements of all these people
24 I think we should be only too happy to receive copies
25 of it from you.

1 MR. BLAKENEY: In that connection, the
2 original from which defense document No. 1957 is taken
3 contains the full text of the pact, the full text of
4 the various notes exchanged among the powers on the
5 subject of reservations, as well as the addresses of
6 Secretary of State Kellogg on the subject. The ori-
7 ginal of defense document No. 672, unless I am mis-
8 taken, is the complete hearing before the Senate
9 Foreign Relations Committee at which Secretary Kellogg
10 appeared.

11 THE PRESIDENT: If you have copies of that
12 State Department publication referred to in the docu-
13 ment tendered, we should be only too happy to receive
14 copies.

15 MR. BLAKENEY: Whether they can be had, I
16 do not know, your Honor. It is dated 1928. But we
17 will endeavor to obtain them.

18 MR. COMYNS CARR: And the prosecution will
19 assist in--
20

21 MR. BLAKENEY: And document No. 1971 is, I
22 think, agreed to be the complete report at that time
23 filed by the Committee on Foreign Relations of the
24 United States Senate on the Kellogg-Briand Pact.

25 The matter can no doubt, as Mr. Tavenner
suggests, be handled in the form of a brief, and I

1 think the parties can agree on the method of presenting
2 the material.

3 THE PRESIDENT: Mr. Carr.

4 MR. COMYNS CARR: Your Honor, we are quite
5 prepared to cooperate in preparing such a document
6 in which each side can present its views and citations
7 which it considers necessary for the assistance of
8 the Tribunal.

9 THE PRESIDENT: We are only too happy to
10 receive any State Department pamphlet which contains
11 those speeches which may help us to determine the
12 meaning of the pact. We would like you to cooperate
13 on that matter.

14 MR. COMYNS CARR: The prosecution will en-
15 deavor to get additional copies of this or a similar
16 document. We know there is a similar and rather
17 larger one.

18 MR. BLAKENEY: On that understanding of the
19 matter, I will withdraw the tender and tender no
20 further documents on this point.

21 THE PRESIDENT: What is next, Mr. Blakeney?
22 What is **the next business?**

23 MR. BLAKENEY: In closing my branch of the
24 case, I wish to ask the Tribunal to take judicial
25 notice of the fact that on the 11th of December, 1941,

~~the United States of America declared war on Germany.~~

1 THE PRESIDENT: We will have no difficulty
2 in taking judicial notice of that fact, or any other
3 declaration of war by any of the powers represented
4 in this court, so far as relevant and material.

5 MR. BLAKENEY: Yesterday morning at page
6 26,206 of the record, Mr. Prosecutor made a statement
7 relative to the cross-examination of the witness,
8 SHIRAO, the statement that is relative to the absence
9 of cross-examination on a particular point and which
10 statement was made in lieu of cross-examination of
11 the witness then on the stand and in contradiction
12 to the position taken by the prosecutor in connection
13 with non-cross-examination of defense witnesses.
14 I do not wish to reopen this controversy about the
15 effect of absence of cross-examination, but I wish
16 to point out in connection with the statement then
17 made by Mr. Tavenner that there was cross-examination
18 of the witness on that point at page 10,592 of the
19 record within the limitations of the witness' know-
20 ledge on that point as shown in his testimony in chief
21 at page 10,570; and I wish to suggest a reading of
22 the testimony of that witness generally in connection
23 with that of the witness KAMEYAMA.
24

25 That concludes the Diplomatic Subdivision of

1 the Pacific Phase, to be followed by the Military
2 Subdivision, of which the first branch, the Naval
3 Section, will be opened and presented by Mr. Brannon.

4 THE PRESIDENT: Mr. Tavenner.

5 MR. TAVENNER: If the Tribunal please, I am
6 advised that if the Tribunal looks at the page that
7 was mentioned by counsel, the correctness of my
8 original statement will be verified; either that
9 page or any other page in the cross-examination.

10 I have spoken to counsel regarding two typo-
11 graphical errors in the course of the transcribing
12 of the cross-examination of the witness YAMAMOTO,
13 and we have agreed, subject to the approval of the
14 Court, to a correction of both of these matters.

15 On page 26,144, line 2, the third word
16 should be "NOMURA" instead of "NAGANO"; and on
17 page 26,147, line 8, the third word from the end
18 should be "OKA" instead of the the word "also." Will
19 the Tribunal direct the correction of the record
20 accordingly?

21 THE PRESIDENT: The corrections will be made
22 accordingly. We will adjourn until half-past nine
23 tomorrow morning.

24 (Whereupon, at 1600, an adjournment
25 was taken until Thursday, 21 August 1947, at
0930.)